

Committee on Safeguards

Status

The Committee on Safeguards was established to administer the WTO Agreement on Safeguards. The Agreement establishes rules for the application of safeguard measures as provided in Article XIX of GATT 1994.

The Agreement on Safeguards incorporates into WTO rules many concepts embodied in U.S. safeguards law (i.e., section 201 of the Trade Act of 1974, as amended). The Agreement requires all WTO Members to use transparent and objective procedures when taking emergency actions to prevent or remedy serious injury to domestic industry caused by increased imports.

Among its key provisions, the Agreement:

- < requires a transparent, public process for making injury determinations;
- < sets out clearer definitions of the criteria for injury determinations;
- < requires safeguard measures to be steadily liberalized over their duration;
- < establishes an eight year maximum duration for safeguard actions, and requires a review and determination no later than the mid-term of the measure;
- < allows safeguard actions to be taken for three years, without the requirement of compensation or the possibility of retaliation; and,
- < prohibits so-called “grey area” measures, such as voluntary restraint agreements and orderly marketing agreements, which had been utilized by countries to avoid GATT disciplines and which adversely affect third-country markets. Measures of this type in existence when the Agreement entered into force were required to be phased out over four years.

Assessment of the First Five Years of Operation

Effective safeguards rules are important to the viability and integrity of the multilateral trading system. Armed with the assurance that they can act quickly to help industries adjust to temporary import surges, the availability of a safeguards mechanism provides WTO Members a flexibility they otherwise would not have to open their markets to international competition. At the same time, WTO safeguards rules ensure that such actions are of limited duration and are gradually less restrictive over time. With the Uruguay Round Safeguards Agreement, the United States succeeded in raising multilateral procedural and substantive requirements for safeguard actions up to a level commensurate with U.S. standards, as embodied in section 201 of the Trade Act of 1974. Other important accomplishments of the Uruguay Round negotiations include clarifying that it is permissible to impose a safeguards measure in response to a *relative* increase in imports; permitting the imposition of a measure for an initial three years, in response to an *absolute* increase in imports, without having to worry about payment of compensation or facing retaliation; and the elimination of voluntary export restraint agreements and orderly marketing arrangements which had previously undermined the integrity of safeguards rules and disciplines.

Over the past five years, WTO Members have made increasing use of the safeguards provisions. Thirty-four safeguards investigations have been instituted since the Agreement came into effect, of which seven were initiated by the United States. The United States has actively used the provisions for bilateral consultation and Committee review to raise concerns about certain safeguard measures imposed and procedures followed by U.S. trading partners. By the same token, in certain cases where increasing imports into the United States have substantially caused or threatened serious injury to a U.S. industry, the injured

U.S. industry has benefitted significantly from the provision of WTO-sanctioned relief that affords the time and opportunity needed to adjust to the emergency situation. Often, the causes and circumstances of an import surge are such that safeguard measures are the only or best-suited remedy available to address the situation. Thus, to date, the Agreement has generally operated so as to provide the combination of structure, balance and flexibility that a full defense of U.S. commercial interests requires. In the future, the United States intends to continue to make vigorous use of the Safeguards Committee both to defend U.S. actions and to ensure that the actions of U.S. trading partners conform to the applicable multilateral requirements.

Major Issues in 1999

During its two meetings in 1999, the Committee continued its review of Members' laws, regulations and administrative procedures, based on notifications required by Article 12.6 of the Agreement. As of early October 1999, 84 Members had notified the Committee of their domestic safeguards legislation. Thirty-five Members had not yet made Article 12.6 notifications. As in prior years, the Committee discussed the extent of non-compliance with the notification obligation and the implications of the situation during both meetings in 1999. Attention is also being paid to safeguard actions that are being initiated by Members who have not complied with their Article 12.6 obligation to notify their safeguards legislation.

The Committee was updated on the status of progress in phasing out previously notified pre-existing Article XIX measures, and measures subject to prohibition and elimination under Article 11.1 of the Agreement. As of late October 1999, the only such measures still in force were the use of minimum import prices for dried grapes and preserved cherries, and a voluntary export restraint on Japanese automobiles, by the European Communities, which were scheduled to be eliminated as of December 31, 1999. Nigeria had notified, in 1998, that its import prohibitions on wheat flour, sorghum, millet, gypsum and kaolin were "pre-existing Article XIX measures," and asked the Committee for a waiver of its notification obligations under Article 12.7 of the Safeguards Agreement. The Committee did not act on that request in 1998 or 1999, and Nigeria had not provided any information, as of late October 1999, on the elimination date for these import prohibitions.

The Committee reviewed Article 12.1(a) notifications of the initiation of and reasons for an investigatory process relating to serious injury or threat thereof from: Colombia (taxis), the Czech Republic (sugar), Ecuador (sandals), India (phenol and acetone), Latvia (swine meat), the Slovak Republic (swine meat), and the United States (lamb meat, steel wire rod and line pipe). Some additional Article 12.1(a) notifications, to be reviewed in 2000, were received from: Chile (tires), Egypt (fluorescent lamps) and India (white/yellow phosphorous).

The Committee received Article 12.1(b) notifications of a finding of serious injury or threat thereof caused by increased imports from: Australia (frozen boneless pork), the Czech Republic (sugar), Egypt (safety matches), India (high density board, propylene glycol, slabstock foam and phenol), and the United States (lamb meat and steel wire rod). All but the Czech Republic (sugar) notifications were reviewed during the year.

The Committee received Article 12.1(c) notifications of a decision to apply (or, in the case of the U.S. measure on wheat gluten, modify) a safeguard measure from: the Czech Republic (sugar), Egypt (safety matches), India (acetylene black, carbon black, propylene glycol, and slabstock foam) and the United States (lamb meat and wheat gluten). All but the Czech Republic (sugar) notifications were reviewed during the year. The Committee received two notifications, from India (hard board) and Australia (swine meat), of the termination of a safeguard investigation with no safeguard measure imposed.

The Committee reviewed Article 12.4 notifications of the application of a provisional safeguard measure

from: the Czech Republic (sugar), Latvia (swine meat), the Slovak Republic (swine meat) and Slovenia (swine meat).

Among other business taken up by the Safeguards Committee in 1999 were two items raised for discussion by Japan concerning possible amendments to U.S. safeguards legislation and the relationship of undertakings instituted pursuant to the Agreement on Subsidies and Countervailing Measures (e.g., U.S. suspension agreements in countervailing duty proceedings) and the provisions of Article 11 of the Safeguards Agreement concerning prohibited measures.

Work for 2000

The Committee has substantially completed its reviews of the laws and regulations of the 84 Members who have notified their safeguards regimes. With the December 31, 1999, expiration of pre-existing Article XIX and Grey Area Measures, the Committee's work in 2000 will focus on the reviews of safeguard actions that have been notified to the Committee and on the notification of new or amended safeguards laws.